UNITED STATES DISTRICT COURT EASTERN DISTRICT OF TENNESSEE AT KNOXVILLE

APRIL ANN HARVEY, next friend of RAMSEY ROBERT HARVEY; and)
MISTY L. GILLIAM, next friend of R.H.,)
Plaintiffs,)
v.) No. 3:07-cv-22
CAMPBELL COUNTY, TENNESSEE, et al.,) (Phillips)))
Defendants.)

ORDER

This matter is before the court on defendant Richard Lowe's renewed motion to dismiss [Doc. 15]. A summons was originally issued for this defendant in December 2006, and an alias summons was issued on January 22, 2007. Defendant Lowe, however, was never served. The 120-day deadline having passed, defendant moved this court to dismiss him from the action pursuant to Rule 4(m) of the Federal Rules of Civil Procedure. At a scheduling conference held on October 25, 2007, this court orally denied defendant Lowe's motion, granting plaintiff an additional thirty days properly to serve defendant Lowe. Accordingly, plaintiff was given up to and including November 26, 2007 to serve process on Lowe. To date, Lowe has not been served, although a summons was issued on November 26, 2007.

Rule 4(m) of the Federal Rules of Civil Procedure provides, "If a defendant is not served within 120 days after the complaint is filed, the court—on motion or on its own after notice to the plaintiff—must dismiss the action without prejudice against that defendant or

order that service be made within a specified time." Fed. R. Civ. Pro. 4(m). Having already extended plaintiffs' deadline for serving Lowe, this court finds that defendant Lowe has

demonstrated good cause for dismissing him from this action.

Accordingly, defendant Richard Lowe's renewed motion to dismiss [Doc. 15] is

GRANTED, whereby plaintiffs' claims against Lowe, individually and in his official capacity,

are **DISMISSED WITHOUT PREJUDICE**.

IT IS SO ORDERED.

ENTER:

s/ Thomas W. Phillips
United States District Judge